

Senate File 2302 - Introduced

SENATE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3104)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act specifying a duty of agency applicable to licensed
2 mortgage brokers and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5345SV 82
5 rn/nh/5

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1 1 Section 1. NEW SECTION. 535B.18 DUTY OF AGENCY.
1 2 1. A licensee or individual registrant acting in the
1 3 capacity of a mortgage broker pursuant to section 535B.1,
1 4 subsection 5, shall be considered to have created an agency
1 5 relationship with the borrower in all cases and shall perform
1 6 all of the following duties:
1 7 a. Act in good faith toward borrowers and place the
1 8 borrower's interest ahead of the interest of any other party,
1 9 including the interest of the licensee or individual
1 10 registrant.
1 11 b. Not accept, give, or charge any undisclosed
1 12 compensation or realize any undisclosed remuneration, either
1 13 through direct or indirect means, that inures to the benefit
1 14 of the licensee or individual registrant on an expenditure
1 15 made for the borrower.
1 16 c. Carry out all lawful instructions provided or issued by
1 17 the borrower.
1 18 d. Disclose to a borrower all material facts of which the
1 19 licensee or individual registrant has knowledge which might
1 20 reasonably affect the borrower's rights, interests, or ability
1 21 to receive the borrower's intended benefit from the mortgage
1 22 loan, but not facts which are reasonably susceptible to the
1 23 knowledge of the borrower.
1 24 e. Use reasonable care in the performance of duties.
1 25 f. Account to the borrower for all the borrower's money
1 26 and property received as agent.
1 27 2. a. This section shall not be construed to prohibit a
1 28 licensee or individual registrant from contracting for or
1 29 collecting a fee for services rendered which was disclosed and
1 30 agreed to by the borrower in advance of the provision of such
1 31 services.
1 32 b. This section shall not be construed as requiring a
1 33 licensee or individual registrant to obtain a loan for the
1 34 borrower containing terms or conditions not available in the
1 35 usual course of business to the licensee or individual
2 1 registrant, or to obtain a loan for the borrower from a
2 2 mortgage lender with whom the licensee or individual
2 3 registrant does not have a business relationship.

EXPLANATION

2 5 This bill confers upon licensed mortgage brokers and
2 6 individual registrants a duty of agency.
2 7 The bill provides that a licensee or individual registrant
2 8 acting in the capacity of a mortgage broker pursuant to Code
2 9 section 535B.1, subsection 5, shall be considered to have
2 10 created an agency relationship with a borrower in all cases.
2 11 The bill specifies duties a licensee or individual registrant
2 12 shall perform pursuant to the agency relationship, including
2 13 acting in a borrower's best interest and in good faith, and
2 14 not accepting, giving, or charging any undisclosed
2 15 compensation or realizing any undisclosed remuneration that
2 16 inures to the licensee's or individual registrant's benefit on
2 17 an expenditure made for the borrower. Additional duties
2 18 include carrying out all lawful instructions provided or

2 19 issued by a borrower, disclosing all material facts of which
2 20 the licensee or individual registrant has knowledge which
2 21 might reasonably affect a borrower's rights, interests, or
2 22 ability to receive the intended benefit from the mortgage
2 23 loan, but not facts which are reasonably susceptible to the
2 24 knowledge of a borrower, using reasonable care in the
2 25 performance of duties, and accounting for all the borrower's
2 26 money and property received as agent.

2 27 The bill states that the duty of agency shall not be
2 28 construed to prohibit a licensee or individual registrant from
2 29 contracting for or collecting a fee for services rendered
2 30 which was disclosed and agreed to by the borrower in advance
2 31 of the provision of the services, and shall also not be
2 32 construed to require a licensee or individual registrant to
2 33 obtain a loan for the borrower containing terms or conditions
2 34 not available to the licensee or individual registrant in the
2 35 usual course of business, or to obtain a loan for the borrower
3 1 from a mortgage lender with whom the licensee or individual
3 2 registrant does not have a business relationship.

3 3 A violation of the bill's provisions subjects a licensee to
3 4 the disciplinary provisions of Code chapter 535B, including
3 5 license suspension and revocation, and imposition of civil
3 6 penalties in an amount not to exceed \$5,000 per violation.

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